IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1042 of 2001

in

SPECIAL CIVIL APPLICATIONNo 4794 of 2001
with
CIVIL APPLICATION NO. 10575 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JAVANJI VARVAJI THADARDA

Appearance:

1. LETTERS PATENT APPEAL No. 1042 of 2001

MR HARDIK C RAWAL for Appellant

MRS NISHA M PARIKH for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 15/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Clause 15 of the Letters Patent is directed against order dated July 2, 2001, rendered by the learned Single Judge, in Special Civil Application No.4794 of 2001, by which prayer made by the appellant to quash award dated September 15, 2000, rendered by the Labour Court, Kalol, in Reference (LCK) No.23/96 directing the appellant to pay to the respondent back wages from December 9, 1994 to June 9, 1996, is rejected.

2. The respondent was employed as a driver by the appellant, and had completed 24 years of service on August 4, 1994 when his services were terminated on the ground that he had absented himself unauthorisedly from service for a period from July 21, 1994 to August 3, 1994. Feeling aggrieved by the order dismissing him from service, the respondent had preferred an appeal as provided by the Regulations framed by the appellant. The appeal filed by the respondent was dismissed by the first appellate authority. Thereupon the respondent had filed second appeal. The second appeal was accepted in part, and it was directed that the respondent should be reinstated in service, but period from December 9, 1994 to June 9, 1996 should be treated as leave without pay, and that he should be reduced by two stages in the salary which he was getting at the time of his dismissal. Before the above quoted order was passed by the second appellate authority, the respondent had raised a dispute regarding legality of order dismissing him from service and claimed reinstatement in service with back wages. On failure of conciliation proceedings, the dispute was referred to Labour Court, Kalol for adjudication, where it was numbered as Reference (LCK) No.23/96. The respondent had filed statement of claim at Exh.4, to which the appellant had not filed any reply whatsoever. The learned advocate of the appellant had submitted an application Exh.11 pointing out that the second appeal filed by the respondent was accepted in part and that a direction was given to the appellant to reinstate the respondent in service by treating the interregnum period as leave without pay, and by imposing punishment of reduction of the salary by two stages, which he was getting at the time of his dismissal.

3. On appreciation of evidence adduced by the respondent, the Labour Court held that it was not proved that the respondent had remained absent unauthorisedly from July 21, 1994 to August 3, 1994. The Labour Court held that during the said period the respondent was ill for which he had taken leave from Depot Manager and got himself treated at Civil Hospital. What was held by the Labour Court was that the respondent had not committed any misconduct whatsoever and, therefore, the order dismissing him from service was illegal. It was noticed by the Labour Court that pursuant to order passed by the second appellate authority, the respondent was reinstated in service and having noticed that fact, the Labour Court proceeded to consider the question whether the respondent was entitled to back wages from the date of dismissal till his reinstatement in service. It was noted by the Labour Court that during the interregnum period the respondent was not gainfully employed and in view of the finding that the respondent had not committed any misconduct, he was entitled to back wages. Therefore, the Labour Court by award dated September 15, 2000 directed the appellant to pay back wages to the respondent for the period from December 9, 1994 to June 9, 1996. Thereupon the appellant invoked extraordinary jurisdiction of the High Court under Articles 226 & 227 of the Constitution by instituting Special Civil Application No. 4794 of 2001. The learned Single Judge has dismissed the petition by order dated July 2, 2001, giving rise to instant appeal.

4. Mr.Hardik C.Raval, learned counsel of the appellant, contended that the order passed by the learned Single is not a speaking order and, therefore, the same should be set aside. According to the learned counsel, the learned Single Judge failed to appreciate the fact that the respondent, who was holding a responsible post of driver, had remained absent unauthorisedly causing financial loss to the appellant as well as inconvenience to the public at large and, therefore, the appeal should be accepted. What was maintained by the learned counsel of the appellant was that having regard to the facts of the case, lenient view was taken by the second appellate authority when direction was given to the appellant to reinstate the respondent in service by treating interregnum period as leave without pay and imposing punishment of reduction by two stages in the salary which he was getting at the time of his dismissal and, therefore, the petition filed by the appellant ought to have been accepted. The learned counsel contended that the contentions raised in the petition have not been

appreciated by the learned Single Judge in their proper perspective and, therefore, the appeal should be allowed.

5. Ms.Nisha M.Parikh, learned counsel of the respondent, contended that the findings of facts recorded by the Labour Court in Para-8 of the Award are not demonstrated to be erroneous and, therefore, the learned Single Judge was justified in rejecting the petition filed by the appellant. What was asserted was that the respondent had not committed any misconduct as alleged by the appellant and, therefore, the well-reasoned award which is upheld by the learned Single Judge should not be disturbed by this Court.

6. This Court has considered the submissions advanced at the Bar and the documents forming part of the petition. It is relevant to notice that on the basis of evidence led by the respondent, the Labour Court has concluded that no misconduct whatsoever was committed by the respondent and that he had not remained absent unauthorisedly at all. What is held by the Labour Court is that the respondent was sick, as a result of which he had got his leave sanctioned from the Depot Manager and thereafter he had taken treatment from the Civil Hospital. It is relevant to notice that the appellant had neither filed written statement, to the statement of claim submitted by the respondent, nor led any oral evidence at all. The finding recorded by the Labour Court to the effect that the respondent had not committed any misconduct is eminently just and not demonstrated to be erroneous at all. The said finding is based on evidence and was not liable to be interfered with in a petition filed under Article 226/227 of the Constitution. Once it is held that the respondent had not committed any misconduct whatsoever, the second appellate authority was not justified in denying back wages to the respondent from the date of dismissal till the date of reinstatement in service. The Labour Court had noticed the fact that the respondent was reinstated in service during the interregnum period and has, therefore, not directed the appellant to reinstate the respondent in service. However, having found that the respondent had not committed any misconduct, the Labour Court has directed the appellant to pay back wages for the period from December 9, 1994 to June 9, 1994, which cannot be regarded as arbitrary or illegal in any manner. This Court is of the firm view that the learned Single Judge did not commit any error in dismissing the petition and no ground is made out by the learned counsel of the appellant to interfere with the same in instant appeal. The net result of the above discussion is that the appeal

lacks merits and deserves to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Interim relief granted in Civil Application No.10575 of 2001 is hereby vacated. Rule issued therein is discharged. There shall be no order as to costs.

(J.M.Panchal,J.)

(A.M.Kapadia,J.)
(patel)